IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

Tr.P(Crl.).No. 68 of 2006()

ST.46/2006 of C.J.M.,TRIVANDRUM
CRL.M.P.(T.P.) 1407/06 OF COURT OF SESSIONS, TRIVANDRUM

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PETITIONER: ACCUSED:

V.K. AMBIKA, D/O.KAMALAMMA,
TC.9/1173, PRABHASREE, MANGALAM LANE,
SASTHAMANGALAM, THIRUVANANTHAPURAM.

BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENTS:
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1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. NAJEEB, S/O. ABDUL SYED,
HOUSE NO.48, MUMMY'S COLONY,
KOWDIAR, THIRUVANANTHAPURAM.

R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS TRANSFER PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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T.P.(Cr.)No. 68 of 2006

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Dated this the 10th day of April, 2007

O R D E R

The petitioner, a woman and a member of the noble profession, is facing a prosecution under Section 138 of the N.I. Act. Second respondent is the complainant. The prosecution is pending before the Court of Chief Judicial Magistrate, Trivandrum. The petitioner approached the learned Sessions Judge, Trivandrum for transfer of the case to any court outside Trivandrum. The learned Sessions Judge, by the impugned order, which is produced as Annex.III, took the view that there is no valid reason to justify the prayer for transfer. Aggrieved by the said order, the petitioner has come before this Court.

2. The learned counsel for the petitioner submits that the petitioner appears before the Court of Chief Judicial Magistrate in connection with many other matters in her professional capacity as an Advocate. In these circumstances compelling the petitioner to stand the trial before the Chief Judicial Magistrate would cause

embarrassment to the petitioner. This is the short and the only ground on which prayer for transfer was made.

3. The application was opposed by the complainant and the learned Sessions Judge in these circumstances felt that there is no sufficient reason to justify a direction for transfer. It is important to note that the complainant has no grievance that the position of the petitioner as an advocate practising in that court would deliver any unjustified advantage to the petitioner. It is also relevant to note that the learned Magistrate has not so far sought transfer on the ground of any personal embarrassment to the learned Magistrate. In these circumstances, I am satisfied that the mere alleged embarrassment of the petitioner cannot justify the prayer for transfer. The complainant cannot be driven to a Court outside Trivandrum solely for the reason that the petitioner happens to be a lawyer practising in that court. The prosecution is only under Section 138 of the N.I. Act. If personal appearance before the Magistrate on all dates of posting is the cause of embarrassment of the petitioner, she can certainly apply for exemption from personal appearance and I find absolutely no reason why personal presence of the petitioner should insisted by any court. The petitioner can apply for exemption and I have no reason to assume that the

learned Magistrate would not consider such application for exemption favourably.

4. This petition is accordingly dismissed. It is submitted that a warrant of arrest has been issued against the petitioner for non-appearance before the learned Magistrate today. The mere fact that such a warrant has been issued cannot persuade the learned Magistrate not to consider such application for exemption. The petitioner can appear through counsel and apply for exemption and such application must be considered by the learned Magistrate on merits and appropriate orders passed.

(R. BASANT)
Judge

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